

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN DEVERICK LEWIS,	}	Case No. CV 08-7336-DSF (DTB)
Plaintiff,		ORDER DISMISSING PLAINTIFF'S CLAIM REGARDING DENIAL OF ACCESS TO THE COURTS
vs.		
C. GULLET, et al.,		
Defendants.	}	

PROCEEDINGS

Plaintiff is currently incarcerated at the California Men's Colony State Prison East in San Luis Obispo, California. On November 5, 2008, he lodged this pro se civil rights action, purported to be brought pursuant to 42 U.S.C. § 1983. The operative complaint in this action is plaintiff's Second Amended Complaint ("SAC") which was filed on July 26, 2012. In the SAC, plaintiff reasserted the retaliation claim against defendants Gullet and Calagawan as it was pled in his First Amended Complaint ("FAC"). Plaintiff also reasserted his claim for denial of access to the courts, alleging that defendants failed to mail a state court filing plaintiff had given them, causing his claim to be "time-barred" by the state court. Plaintiff sought compensatory damages of \$10,000.00, an unnamed amount of punitive damages, and the costs of the suit and attorneys' fees.

1 On November 2, 2011, the District Judge accepted the findings, conclusions
2 and recommendations of the Magistrate Judge granting, with leave to amend,
3 defendants' Motion to Dismiss for failure to state claim for the denial of access to the
4 courts; denying without prejudice defendants' Motion to Dismiss based on qualified
5 immunity; and denying defendants' request to strike plaintiff's request for punitive
6 damages. The order expressly stated that if plaintiff still desired to pursue a claim
7 alleging a denial of access to the courts, he was required to file a Third Amended
8 Complaint on or before December 2, 2011. Plaintiff failed to timely file a Third
9 Amended Complaint within the allotted time nor did he request an extension of time
10 within which to do so.

11 Accordingly, on December 27, 2011, the Court issued an Order to Show Cause
12 ("OSC") ordering petitioner to either (a) advise the Court that he does not desire to
13 pursue a denial of access to the courts claim; (b) if plaintiff does desire to pursue a
14 denial of access to the courts claim, show good cause in writing, if any exists, why
15 plaintiff has not timely filed with the Court his Third Amended Complaint, and why
16 the Court should not recommend that this action be dismissed, with prejudice, for
17 failure to prosecute and failure to comply with the Court's prior Order; or (c) serve
18 and file a Third Amended Complaint. On January 9, 2012, plaintiff filed his
19 Response to the OSC wherein he advised the Court that he "does not desire to pursue
20 a denial of access to the courts claim. The plaintiff does not desire to amend his
21 complaint and request to proceed on his retaliation claim."

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1 As plaintiff has advised the Court that he no longer desires to pursue a denial
2 of access to the courts claim, the Court hereby dismisses, with prejudice, plaintiff's
3 claim in the SAC that he was denied access to the courts.

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5 DATED: 2/10/12

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8 DALE S. FISCHER
9 UNITED STATES DISTRICT JUDGE

10 Presented by:

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12 David T. Bristow
13 United States Magistrate Judge
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